



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG-2021-0426]

RIN 1625-AA00

Special Local Regulation; Swim for Special Operations Forces; San Diego Bay, San Diego, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to amend its special local regulations for recurring marine parades, regattas, and other events in Southern California Annual Marine Events for the San Diego Captain of the Port Zone. This proposed rule would add one new recurring special local regulation. This action is necessary to provide for the safety of life on the navigable waters during the event. This proposed rulemaking would restrict vessel traffic in the designated areas during the events unless authorized by the Captain of the Port San Diego or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2021-0426 using the Federal eRulemaking Portal at <https://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Lieutenant Commander John Santorum, Waterways Management, U.S. Coast Guard; telephone 619-278-7656, email MarineEventsSD@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background, Purpose, and Legal Basis

The Coast Guard proposes to amend 33 CFR 100.1101 by adding a new reoccurring marine event to the Table 1 of Section § 100.1101 for a swim race in San Diego Bay, CA.

The Honor Foundation notified the Coast Guard that it will be hosting the Honor Foundation Swim for Special Operations Forces (SOF) annually on a Saturday during the month of September. The regulated area would cover all navigable waters of the San Diego Bay, beginning at Glorietta Bay, continuing to Tidelands Park before proceeding north along the Coronado shoreline, crossing the federal navigable channel at Bayview Park, and finishing at the USS MIDWAY Museum.

The proposed annually reoccurring special local regulation is necessary to provide for the safety of life on navigable waters during the event. Based on the nature of this marine event, the large number of participants, and event location, the COTP has determined that the event listed in this proposed rule could pose a risk to participants or waterways users if the normal vessel traffic were to interfere with the event. Possible hazards include risks of injury or death from near or actual contact among participants

and mariners traversing through the regulated area. In order to protect the safety of all waterway users, including event participants and spectators, this proposed rule would establish a special local regulation for the time and location of the marine event. Vessels would not be permitted to enter the regulated areas unless authorized by the COTP or a designated representative.

The Coast Guard proposes this rulemaking under authority in 46 U.S.C. 70041.

III. Discussion of Proposed Rule

The Coast Guard proposes to add one new recurring special local regulation in Table 1 to § 100.1101 for the Honor Foundation Swim for Special Operations Forces. The duration of the regulated area is intended to ensure the safety of the public during the swim. Non-participant vessels are not permitted to enter, transit through, anchor in, or remain within the regulated area without obtaining permission from the Captain of the Port San Diego or a designated representative. The Coast Guard will provide notice of the regulated area by Broadcast Notice to Mariners and on-scene designated representatives. The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, and duration of the special local regulation. Vessel traffic would be able to safely transit around this special local regulation, which would impact a small-designated area of the San Diego Bay. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the areas, and the rule would allow vessels to seek permission to enter the areas.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the FOR FURTHER

INFORMATION CONTACT section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132 (Federalism), if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in

such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a regulated area that would prohibit persons and vessels from transiting the regulated area during the swim event. Normally such actions are categorically excluded from further review under paragraph L[61] of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A preliminary Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the ADDRESSES section of this preamble. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <https://www.regulations.gov>. If your material cannot be submitted using <https://www.regulations.gov>, call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. Comments we post to <https://www.regulations.gov> will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Documents mentioned in this NPRM as being available in the docket, and public comments, will be in our online docket at <https://www.regulations.gov> and can be viewed by following that website's instructions. We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 100 as follows:

PART 100--SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

Authority: 46 U.S.C. 70041; 33 CFR 1.05-1.

2. In §100.1101, in table 1 to §100.1101, add item number 16 to read as follows:

§100.1101 Southern California Annual Marine Events for the San Diego Captain of the Port Zone.

Table 1 to §100.1101

16. Swim for Special Operations Forces; San Diego Bay, San Diego, CA	
Sponsor	The Honor Foundation
Event Description	Swim race.
Date	Saturday in September.
Location	San Diego Bay, CA.
Regulated Area	All waters of San Diego Bay, from surface to bottom, beginning at Glorietta Bay, continuing to Tidelands Park, proceeding north along the Coronado shoreline, crossing the federal navigable channel at Bayview Park, and finishing at the USS MIDWAY Museum.

Dated: June 25, 2021

T. J. BARELLI,

Captain, U. S. Coast Guard,

Captain of the Port San Diego.